

² 5 U.S.C. § 8101 *et seq.*

ISSUE

The issue is whether appellant met his burden of proof to establish a traumatic injury in the performance of duty on April 3, 2015, as alleged.

On appeal counsel argues that the medical evidence is sufficient to establish appellant's claim.

FACTUAL HISTORY

On April 14, 2015 appellant, then a 55-year-old transportation security officer, filed a traumatic injury claim (Form CA-1) alleging that while on a break on April 3, 2015 he sustained neck, bilateral shoulder, bilateral knee, and bilateral hand injuries when he tripped over a curb and landed on both his hands while heading to respond to a bag jam. He also explained that he scraped both knees as a result of the fall and experienced bleeding of the left knee. Appellant stopped work on April 14, 2015. On the back of the form, appellant's supervisor indicated that the alleged incident occurred on April 10, 2015. She noted that appellant injured his knees when he tripped on a curb.

In an April 23, 2015 attending physician's report (Form CA-20), Carolyn L. Hoffman, advanced registered nurse practitioner, noted an injury date of April 10, 2015 and diagnosed cervical and trapezius strains. She checked a box marked "yes" to the question of whether the diagnosed conditions had been caused or aggravated by the employment activity. Appellant related that the injury occurred due to his tripping over an irregularity in the sidewalk and falling on his hands and knees.

In an April 14, 2015 report, Dr. Christopher L. Loutzenhiser, an osteopath specializing in family practice, reported that appellant was seen for neck and shoulder pain. He reported April 10, 2015 as the date of the work injury. Physical examination findings were provided and a cervical x-ray was ordered.

In a report dated April 16, 2015, Ms. Hoffman again indicated that appellant was seen for neck pain. She reported that he sustained a neck injury on April 10, 2015 and that an April 16, 2015 x-ray interpretation showed no acute cervical abnormality.

On April 24 and May 8, 2015 Dr. Paul Fortier, a Board-certified internist, reported that appellant was seen for neck pain. He provided physical examination findings which included left neck and trapezius tenderness and restricted neck range of motion. Dr. Fortier diagnosed cervical and trapezius muscle strains and provided work restrictions. In the May 8, 2015 report, Dr. Fortier noted it had been four weeks since appellant had fallen onto his hands and knees.

In a June 22, 2015 report, Dr. David W. Krueger, a Board-certified physiatrist and pain medicine physician, noted that appellant was seen for neck pain. Under history of illness, he reported that appellant has had chronic arm and neck pain for over 10 years and that he recently tripped over a curb and fell at work. A physical examination revealed no tenderness on palpation of the shoulder muscles, tenderness on palpation of the cervical spine, or abnormal cervical range

of motion. Diagnoses included cervical disc degeneration, cervical spondylosis, mild-to-severe multilevel foraminal stenosis at C3-4, C4-5, and cervical radiculopathy.

By letter dated July 9, 2015, OWCP informed appellant that at the time his claim had been received that it appeared to be a minor injury with no lost time and the merits of the claim were not adjudicated. It informed appellant that his claim had been reopened as it had received a claim for wage-loss compensation. OWCP further advised appellant that the evidence of record was insufficient to establish his claim. It noted that documentation submitted was insufficient to establish both the factual and medical parts of his claim. OWCP noted that appellant claimed that the incident occurred on April 3, 2015, but the evidence of record was insufficient to establish that he experienced the incident alleged to have caused the injury or that the incident occurred in the performance of duty. OWCP advised that since the evidence of record indicated that the alleged incident occurred while appellant was on break, he should provide additional information as to his activities during his break and a further description as to why the fall occurred. Appellant was advised as to the medical and factual evidence required and afforded 30 days to provide this information. He did not respond to OWCP's request for further factual information regarding his claim. OWCP did receive additional medical evidence.

On July 29, 2015 OWCP received a May 5, 2015 magnetic resonance imaging (MRI) scan diagnosing multiple levels of spinal stenosis with early cord compression at C3-4 and a disc bulge of indeterminate age.

By decision dated August 20, 2015, OWCP denied appellant's claim. It found that the alleged incident occurred on April 10, 2015, but denied the claim as the medical evidence was insufficient to establish causal relationship.

In an August 26, 2015 report, Dr. Krueger noted that appellant was seen for a follow-up visit for his neck pain and that appellant continued to work light duty. Appellant related having preexisting conditions, but believed the fall caused his current symptoms. Physical examination findings and diagnoses were unchanged from the prior June 22, 2015 report. Dr. Krueger reported that the fall appeared to have aggravated appellant's preexisting condition and he was to continue in light-duty work until his arm symptoms improved.

In a report dated September 24, 2015, Dr. Fortier reported that appellant was first seen by Dr. Loutzenhiser on April 14, 2015 and that he had evaluated appellant in April and May for his April 10, 2015 employment injury. He summarized findings from prior medical evaluations and provided a description of the April 10, 2015 incident when appellant tripped over a sidewalk irregularity and fell. Dr. Fortier reported a history of neck pain from a motor vehicle accident 10 years prior. A cervical spine MRI scan revealed spinal stenosis at multiple levels with cord compression, as well as a disc bulge of indeterminate age. Dr. Fortier opined that the April 10, 2015 fall at work aggravated appellant's underlying chronic cervical degenerative disc disease as he had been doing well prior to the fall.

In a letter dated October 27, 2015, counsel requested reconsideration and submitted medical evidence including a June 24, 2015 report by Dr. Anthony Hall, a neurosurgeon.

In the June 24, 2015 report, Dr. Hall noted that on April 10, 2015 appellant had sustained a slip and fall injury at work. Appellant informed Dr. Hall that he fell because his legs went out on him while walking at work. In addition, he noted that he was unconscious for an indeterminate period of time and that he had lost his glasses. Appellant also explained that he was unable to recall all of the details regarding the incident. Dr. Hall noted appellant's other injuries including a motor vehicle accident 10 years ago in which appellant sustained cervical whiplash injury and had received epidurals and treatment. According to appellant, his last epidural took place in April 2014. A physical examination revealed tenderness on palpation in the mid and lower cervical region and mild left deltoid and triceps weakness. A sensory examination revealed a slight cervical decline. A review of a May 15, 2015 MRI scan showed spinal stenosis, cervical disc herniations and tears, C3-4 central herniation, and cord indentation and displacement. Dr. Hall diagnosed cervical spine and head injuries and loss of consciousness due to the work injury and recommended surgery.

Dr. Krueger, in a report dated September 30, 2015 and amended on October 6, 2015, opined that appellant's work injury exacerbated his preexisting cervical stenosis as it had not been painful or restrictive at the time of injury.

By decision dated January 20, 2016, OWCP denied modification. It noted that appellant reported the injury date as April 3, 2015 on his claim form, but subsequently claimed his preexisting condition had been aggravated by an April 10, 2015 fall. OWCP found that there were inconsistencies in the factual evidence of record as to whether the alleged incident occurred at the time, place, and in the manner alleged. It also found that the medical evidence was insufficiently rationalized to establish a causal relationship between the diagnosed medical condition and the employment incident.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his claim including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.⁴ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.⁵

To determine whether a federal employee has sustained a traumatic injury in the performance of duty it must first be determined whether fact of injury has been established.⁶ First, the employee must submit sufficient evidence to establish that he actually experienced the

³ *Id.*

⁴ C.S., Docket No. 08-1585 (issued March 3, 2009); *Bonnie A. Contreras*, 57 ECAB 364 (2006).

⁵ *S.P.*, 59 ECAB 184 (2007); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁶ *B.F.*, Docket No. 09-60 (issued March 17, 2009); *Bonnie A. Contreras*, *supra* note 4.

employment incident at the time, place, and in the manner alleged.⁷ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁸

An employee has the burden of proof to establish the occurrence of an injury at the time, place, and in the manner alleged, by a preponderance of the reliable, probative, and substantial evidence. An injury does not have to be confirmed by eyewitnesses in order to establish the fact that an employee sustained an injury in the performance of duty, as alleged, but the employee's statements must be consistent with surrounding facts and circumstances and his subsequent course of action.⁹ An employee has not met his burden of proof to establish the occurrence of an injury when there are such inconsistencies in the evidence as to cast serious doubt upon the validity of the claim.¹⁰

ANALYSIS

On April 14, 2015 appellant filed a traumatic injury claim alleging that on April 3, 2015 he sustained a neck, bilateral shoulder, bilateral knee, and bilateral hand injuries as a result of tripping over a curb and landing on both his hands while heading to respond to a bag jam. The Board finds that appellant has failed to substantiate that he sustained an injury while tripping over a curb on April 3, 2015. There are inconsistencies in the factual evidence which cast serious doubt on the validity of his claim.

On appellant's claim form he noted that he was on a break when he tripped over curbing heading to respond to a bag jam on April 3, 2015 and that he fell on his hands and scraped his knees, causing bleeding of the left knee. On the back of the form, his supervisor noted that the alleged incident occurred on April 10, 2015, not April 3, 2015. The medical evidence of record also notes April 10, 2015 as the date appellant fell, not April 3, 2015. Appellant has not explained why he listed April 3, 2015 as the date of the incident on his claim form and informed his supervisor and physicians that the incident occurred on April 10, 2015. OWCP advised appellant in a July 9, 2015 letter that the medical and factual evidence was insufficient to support his claim. It provided a questionnaire for appellant to complete and noted that the date of injury on his claim form was April 3, 2015. Appellant was specifically advised that the evidence was insufficient to establish that he experienced the incident alleged, and that the incident occurred while he was performing a duty of his employment.

In addition Dr. Hall's report casts doubt as to appellant's account of how the April 10, 2015 incident occurred. His description of the incident as reported to him by appellant is different than the history provided on the claim form. Dr. Hall's description of the incident is

⁷ *D.B.*, 58 ECAB 464 (2007); *David Apgar*, 57 ECAB 137 (2005).

⁸ *C.B.*, Docket No. 08-1583 (issued December 9, 2008); *D.G.*, 59 ECAB 734 (2008); *Bonnie A. Contreras*, *supra* note 4.

⁹ See *Joseph H. Surgener*, 42 ECAB 541, 547 (1991); *Gene A. McCracken*, Docket No. 93-2227 (issued March 9, 1995).

¹⁰ See *K.B.*, Docket No. 15-1527 (issued March 15, 2016).

that appellant's legs went out while walking at work along with a period of indeterminate unconsciousness. On his claim form, appellant noted scraping his knees, and bleeding of his left knee, but he did not relate a history of indeterminate unconsciousness. Dr. Hall also reported a preexisting cervical injury due to a motor vehicle accident 10 years prior, which included treatment for the injury as recent as April 2014. The Board notes that Dr. Hall's report provides a history of injury and medical history, both significantly inconsistent with regard to the circumstances of the alleged incident as to appellant's account reported on the claim form.

As the evidence of record indicated that appellant was on break when the alleged incident occurred, appellant was also asked to explain what he was doing on break, and what caused the alleged fall. There was no response from appellant, as he failed to submit the requested evidence.¹¹ Therefore, not only does it remain unclear as to when the alleged incident occurred, it remains unclear as to whether appellant was in the performance of duty at the time of the incident as he has not provided a statement fully describing his activities while on break and how and where his fall occurred. Whether an injury occurs at the time, place, and in the manner and in the performance of duty is a preliminary issue before the merits of the claim are adjudicated.¹² Given the inconsistencies in the evidence of record the Board finds that there is insufficient evidence to establish that the incident occurred in the performance of duty on April 3, 2015, as alleged.¹³

On appeal counsel argues that Dr. Krueger's opinion is sufficiently rationalized to establish that appellant sustained an aggravation of an underlying condition by the incident. In the alternative, he argued the opinion is sufficient to warrant further development of the record. The Board, however, finds the evidence of record insufficient to establish that the incident occurred as alleged or in the performance of duty. As the Board finds that appellant failed to establish the factual aspect of his claim, it is unnecessary for the Board to consider the medical evidence.¹⁴

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

¹¹ *P.J.*, Docket No. 16-1018 (issued September 1, 2016). Appellant did not respond to OWCP's request for further information as to how the alleged incident occurred and did not establish that the alleged incident occurred as alleged.

¹² *See P.L.*, Docket No. 16-631 (issued August 9, 2016).

¹³ *See Alvin V. Gadd*, 57 ECAB 172 (2005) (appellant failed to submit sufficient factual evidence supporting his traumatic injury claim); *Mary Joan Coppolino*, 43 ECAB 988 (1992) (the Board found that discrepancies and inconsistencies in appellants statements describing the injury created serious doubts that the injury was sustained in the performance of duty).

¹⁴ *B.W.*, Docket No. 13-244 (issued May 13, 2013); *S.P.*, *supra* note 5; *Bonnie A. Contreras*, *supra* note 4; *Paul Foster*, 56 ECAB 208 (2004).

CONCLUSION

The Board finds that appellant has not met his burden of proof to establish a traumatic injury in the performance of duty on April 3, 2015, as alleged.

ORDER

IT IS HEREBY ORDERED THAT the decision of the Office of Workers' Compensation Programs dated January 20, 2016 is affirmed, as modified.

Issued: April 18, 2017
Washington, DC

Christopher J. Godfrey, Chief Judge
Employees' Compensation Appeals Board

Alec J. Koromilas, Alternate Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board